

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

IN RE: SMITTY’S/CAM2 303 TRACTOR)	
HYDRAULIC FLUID MARKETING, SALES)	
PRACTICES, AND PRODUCTS LIABILITY)	MDL No. 2936
LITIGATION)	
)	Master Case No. 4:20-MD-02936-SRB

ORDER

Before the Court is Plaintiffs’ Motion for Leave to File Fifth Amended Consolidated Complaint and Join Plaintiff-Related Entities and Trusts. (Doc. #808.) For the reasons discussed below, the motion is GRANTED.

Pursuant to Federal Rule of Civil Procedure 15(a), which established a “liberal amendment policy,” a court should deny a motion for leave to amend pleadings “only in those limited circumstances in which undue delay, bad faith on the part of the moving [party], futility of the amendment, or unfair prejudice to the non-moving party can be demonstrated.” *Roberson v. Hayti Police Dept.*, 241 F.3d 992, 995 (8th Cir. 2001) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). “Delay alone is not a reason in and of itself to deny leave to amend; the delay must have resulted in unfair prejudice to the party opposing amendment.” *Id.* (citing *Sanders v. Clemco Indus.*, 823 F.2d 214, 217 (8th Cir. 1987)). “The burden of proof of prejudice is on the party opposing the amendment.” *Sanders*, 823 F.2d at 217.

Upon review of the parties’ arguments, Plaintiff is granted leave to file a Fifth Amended Consolidated Complaint (“5ACC”). Regarding the 23 new parties brought into this MDL by the 5ACC, the parties shall engage in extensive Rule 26 disclosures to be completed within the next thirty days. Plaintiffs shall make the 23 new parties available for depositions within the next thirty days. All deposition costs shall be borne by Plaintiffs.

Defendants' request for full briefing on a motion to dismiss the 5ACC is denied. However, Defendants may file motions for summary judgment regarding the 5ACC if the additional discovery warrants them. Further, to the extent the parties wish to extend the briefing schedule on class certification by thirty days, the parties shall file a motion with the Court.

Accordingly, it is hereby **ORDERED** that Plaintiffs' Motion for Leave to File Fifth Amended Consolidated Complaint and Join Plaintiff-Related Entities and Trusts (Doc. #808) is **GRANTED**.

It is **FURTHER ORDERED** that:

(1) Defendants' Motion for Summary Judgment on the Claims of Jack Kimmich (Doc. #804) is **DENIED IN PART**, to the extent Defendants argue Jack Kimmich is not the real party in interest; and

(2) Defendants' Motion for Summary Judgment on the Claims of Ross Watermann (Doc. #812) is **DENIED**.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: April 19, 2023